SUPREME COURT, U. S.

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No. 291

In the Supreme Court of the United States

ROBERT C. TREFFRY, et al., Appellants

v.

LOUISE TAYLOR, as Director of Licenses for the State of Washington,

Appellee,

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE NORTHWEST CHAPTER, INC.; HOME BUILDERS ASSOCIATION OF GREATER SEATTLE, and HOME BUILDERS ASSOCIATION OF GREATER TACOMA, INC.,

Intervenor-Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

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In the Supreme Court of the United States

October Term, 1965

No.

ROBERT C. TREFFRY, et al., Appellants

v.

LOUISE TAYLOR, as Director of Licenses for the State of Washington,

Appellee,

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE NORTHWEST CHAPTER, INC.; HOME BUILDERS ASSOCIATION OF GREATER SEATTLE, and HOME BUILDERS ASSOCIATION OF GREATER TACOMA, INC.,

Intervenor-Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

Appellants appeal from the judgment of the Supreme Court of the State of Washington entered on January 27, 1966, reversing judgment of the court below, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Washington is reported at 67 Wn.2d 477, 408 P.2d 269. The

memorandum opinion of the trial court is unreported. It is included in the Record 54-62.

JURISDICTION

This action was commenced as a challenge to the validity of the Washington Contractors' Registration Act, Chapter 77, Washington Laws of 1963 (RCW 18.27) as being repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and as violating various provisions of the Constitution of the State of Washington. The final judgment of the Supreme Court of the State of Washington was entered on January 27, 1966, and Notice of Appeal was filed in that court on April 26, 1966.

The jurisdiction of the Supreme Court to review this decision on appeal is conferred by 28 U.S.C. 1257 (2). The following decision sustains the jurisdiction of the Supreme Court to review the judgment on appeal: *American Oil Co. v. Neill*, 380 U.S. 451 (1965).

STATUTE INVOLVED

Chapter 77, Washington Laws of 1963 (RCW 18.27) is attached as Appendix A.

QUESTIONS PRESENTED

1. Is Chapter 77, Washington Laws of 1963 (RCW 18.27), on its face and as applied, invalid as being repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States?

(a) Is freedom of occupation among those basic rights protected by the due process clause?

(b) Is the law, in depriving appellants and others of their freedom of occupation, repugnant to the due process clause?

(c) Is the law, in conditioning the right to engage in or to continue to engage in business, on making a deposit in advance as security for honest business obligations to be incurred in the future, repugnant to the due process clause? *i.e.* Is such a requirement reasonably related to an individual's fitness or capacity to engage in the contracting business? Is such a law reasonably related to a constitutionally permissible objective?

(d) Does the law, in failing to provide a special period of limitations within which actions against the deposit must be commenced and thereby causing the State to hold the deposits for at least six years after the contractor has gone out of business, deprive appellants and others of property without due process of law?

(e) Is the law, in depriving unregistered contractors of access to state courts to enforce their claim for work done, repugnant to the due process clause?

2. Is Chapter 77, Washington Laws of 1963 (RCW 18.27), on its face and as applied, repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States?

(a) Is the law, in failing to relate the amount of the bond or deposit to the size of the contractor's business, repugnant to the equal protection clause?

(b) Are appellants denied equal protection of law because they are required to post a $2,000.00 cash de-

posit with the State while large contractors are able to comply with the law by paying a nominal bond premium?

STATEMENT OF THE CASE

Appellants are small, self-employed, independent contractors. They commenced this action in July 1963 to challenge the validity of the "Contractors' Registration Act" enacted by the 1963 Washington legislature, and to secure an injunction restraining the Director of Licenses from enforcing the Act.

Three western Washington chapters of associations of large established contractors intervened in the state court action in support of the law. These organizations through common legal representation are largely responsible for drafting and securing the enactment of the law.

How the Federal Questions Are Presented

The action was brought as a class action for a declaratory judgment. The complaint raised the federal constitutional questions presented here. (Amended Complaint paragraphs IX and X; Record 24-25). The trial court while noting these questions found it unnecessary to reach them, because it held that the Act violated Article II, Section 19 of the Washington State Constitution. (Memorandum Opinion, Record 57).

The federal constitutional questions were urged again before the Supreme Court of the State of Washington as additional arguments in support of the trial court's judgment. (Brief of Respondents, page 19-37, Record 199).

The State Supreme Court considered these contentions and rejected them.

Treffry v. Taylor, 67 Wn.2d 477, 482, 408 P.2d 269, 273 (1965):

> "Respondents' pleadings further alleged that the act is unconstitutional because (1) it is violative of the due process and equal protection clauses of the federal and state constitutions . . ."

67 Wn.2d at 484, 408 P.2d at 274:

> ". . . we hold that the standards fixed by the legislature for the registration of contractors and the classifications prescribed by the Act do not violate any of the constitutional mandates relied upon by respondents."

Appellants' position throughout this litigation has been that the statute on its face and as applied is invalid as being repugnant to the due process and equal protection clauses of the Fourteenth Amendment and that it deprives appellants and others similarly situated of their rights guaranteed by these constitutional provisions. Since the State Court upheld the State statute under this attack, appeal lies to this Court pursuant to 28.U.S.C. 1257(2).

The law in question is a peculiar form of business regulation. It is not a license law. No discretion is exercised by a state board or agency. Instead, a contractor's right to stay in business is contingent upon his ability to buy a bond or make a cash deposit.

If a contractor does any work in Washington without being "registered", he is barred from suing in the state

courts to enforce claims for work done (RCW 18.27.080); he has also committed a criminal offense (RCW 18.27.020).

In order to be registered, a contractor must pay a registration fee (RCW 18.27.070), file with the Director of Licenses certain information (RCW 18.27.030), carry liability insurance of a specified amount (RCW 18.27.050), and post a $2,000.00 bond or cash deposit if a "general" contractor, or a $1,000.00 bond or deposit if a "specialty" contractor (RCW 18.27.040).

Appellants' objections to this law stem principally from the bond-cash deposit requirement.

The bond is conditioned (RCW 18.27.040) to cover virtually all honest business debts which the contractor may incur. It also covers negligence. It does not by its terms, cover liability arising from fraud or dishonesty. The law fails to place a time limit within which claims against the bond must be brought; consequently, the bond is exposed for at least six years after the work is completed under the general Washington Statute of Limitations (RCW 4.16.040).

Because of the breadth of these conditions, bonding companies have erected high financial qualifications before they will issue a bond. They uniformly require a minimum net worth of $35,000.00 for the $2,000.00 bond and $25,000.00 for the $1,000.00 bond. (Findings of Fact IX and X, Record 66-67). For the thousands of small contractors who cannot meet the requirements of the bonding companies, this law can be complied with only by making a cash deposit. The Director of Licenses has announced

that such cash deposits will be held until *at least* six years after the contractor has gone out of business. The "deposit" is in fact an "exaction".

Seven of the eight appellants are unable to secure the bond required by the law, (Findings of Fact VII and VIII, Record 66). These men are nevertheless honest and competent craftsmen with good credit reputations, (Findings of Fact XXV, Record 70). Most of the appellants cannot raise the money to make the cash deposit with the State, (Findings of Fact XII and XIII, Record 67). All of the appellants have been in the contracting business for years. They have accumulated tools and equipment for use in their various specialties. A legislative denial of the right to pursue their trades deprives appellants of valuable economic rights. Beyond this, it deprives them of their personal freedom of occupation.

THE QUESTIONS ARE SUBSTANTIAL

In essence this appeal asks the Court to examine the extent of its apparent withdrawal from the area of so-called "economic due process" and to recognize that an individual's freedom of occupation may be just as precious as his freedom of speech and to hold that state legislation may not subvert freedom of occupation without regard to some constitutional limitation.

Appellants ask the Court to hold that legislative prerequisites for engaging in business must bear a rational relation to an individual's fitness and capacity to engage in that business and to a constitutionally permissible objective.

1. A Limitation or Freedom of Occupation Must Bear a Rational Relation to a Constitutionally Permissible Objective.

Although some statements of this court in the immediate post 1937 period indicate an almost total withdrawal from the area of economic due process and a virtual abandonment of the rational relation test, the Court has never held that an individual's freedom of occupation is wholly without constitutional protection. In bringing this appeal, appellants are not asking the Court to return to the pre-1937 extreme of *Adkins, Lochner,* etc.,[1] but merely to reaffirm that freedom of occupation is entitled to some constitutional protection.

Appellants believe that recent opinions of this Court indicate concern with an apparent dichotomy that has developed between personal rights and economic rights.[2] If there is indeed a dual standard for review, appellants ask the Court to consider whether such a double standard, if appropriate at all, is applicable to an individual's freedom of occupation. It is submitted that the freedom of an individual to follow his chosen occupation is as basic and is as dear to most individuals as their freedom to read *Fanny Hill*[3] or to watch "The Miracle".[4] See especially McCloskey,

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1 Adkins v. Children's Hospital, 261 U.S. 525 (1923); Lochner v. New York, 198 U.S. 45 (1905).

2 See Emerson, *Nine Justices in Search of a Doctrine,* 64 Mich. L. Rev. 219 (1965) especially pp. 222-225.

3 A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of the Commonwealth of Massachusetts, — U.S. —, 16 L.ed2d 1 (1966).

4 Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952).

Economic Due Process and the Supreme Court, [1962] Supreme Court Review 34, 46:

> "But most men would probably feel that an economic right, such as freedom of occupation, was at least as vital to them as the right to speak their minds. Mark Twain would surely have felt constrained in the most fundamental sense, if his youthful aspiration to be a river-boat pilot had been frustrated by a State-ordained system of nepotism. Needless to say, no disparagement of freedom of expression is here intended. But its inarguable importance to the human spirit, on the one hand, does not furnish an adequate ground for downgrading all economic rights, on the other."

As Professor McCloskey points out, it is no protection to a small minority or to an independent businessman to say that as long as the Constitution affords him the opportunity to disagree with the decision of the majority, he has received his full constitutional due. The small independent contractors of Washington State are no match in the legislative chambers for the lobbying machines and efficient organizations of Intervenors. The young men of today who will be prevented from entering the contracting industry tomorrow by this law are even less able to effectively fight for their future rights. "To speak of their power to defend themselves through political action is to sacrifice their civil rights in the name of an amiable fiction." McCloskey, *Economic Due Process and the Supreme Court,* [1962] Supreme Court Review 34, 50:

> "But the scattered individuals who are denied access to an occupation by State-enforced barriers are about as impotent a minority as can be imagined. The would-be barmaids of Michigan or the would-be plumbers of Illinois have no more chance against the entrenched

> influence of the established bartenders and master plumbers than the Jehovah's Witnesses had against the prejudices of Minersville School District. In fact the Witnesses may enjoy an advantage, for they are at least cohesive; and other 'discrete' minorities, such as racial groups, have occasionally displayed respectable capacities to exert political leverage by virtue of their very discreteness. *Not so the isolated economic man who belongs to no identifiable group at all.*" (Emphasis added)

In *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957), the Court undertook a judicial review of a law infringing occupational freedom, starting at 238:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment . . . . . *but any qualification must have a rational connection with the applican't fitness or capacity* . . ." (Emphasis added)

McCloskey, op.cit. page 59, suggests that in *Schware* the court appears to have "at least taken the preliminary steps for re-establishing judicial review of laws infringing occupational freedom." Appellants do not view this as "re-establishment", but rather as an affirmation of a principle consistently applied by the Court since 1866; namely, that legislative qualifications on the right to engage in an occupation must relate to a person's fitness or capacity to engage in that occupation. *Cummings v. Missouri*, 4 Wall 277, 319 (1866); *Ex Parte Garland*, 4 Wall 333, 379 (1866); *Yick Wo. v. Hopkins*, 118 U.S. 356 (1886); *Takahashi v. Fish and Game Commission*, 334 U. S. 410 (1948). There is no evidence that Chief Justice Hughes viewed his opinion in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) as

inconsistent with his earlier comment in *Truax v. Raich*, 239 U. S. 33, 41 (1915):

> "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure."

The Court clearly reiterates in the trio of right-to-practice-law cases in 1961 that a state may not arbitrarily forbid the following of a particular profession. *Konigsberg v. State Bar of California*, 366 U. S. 36 (1961); *In re Anastaplo*, 366 U. S. 82 (1961); *Cohen v. Hurley*, 366 U. S. 117 (1961). See also the dissenting opinions of Justices Frankfurter, Douglas and Black in *Barsky v. Board of Regents*, 347 U. S. 442 (1954).

Justice Douglas dissenting at 472:

> "The right to work, I had assumed, was the most precious liberty that man possesses."

Justice Black dissenting at 459:

> ". . . the right to practice is, as Mr. Justice Douglas shows, a very precious part of the liberty of an individual physician or surgeon. It may mean more than any property. Such a right is protected from arbitrary infringement by our Constitution, which forbids any State to deprive a person of liberty or property without due process of law."

Relying on this line of authority, appellants contend that the $2,000.00 cash deposit requirement in the Contractors' Law bears no rational connection to an individual's fitness or capacity to be a contractor and that the applica-

tion of the principle annunciated in *Schware* would invalidate the law in question here.

The record establishes that the Washington Contractors' Law will prevent many men from engaging in or continuing to engage in the contracting business. The appellants' situations illustrate this. The trial court found that each of the appellants "have good credit records regularly pay their debts, are competent in their respective crafts, and their continuation in the contracting business in no way harms or threatens the health, safety, morals or welfare of the people of the State of Washington." (Findings of Fact XXV, Record 70) The court also found that it was impossible for some of the appellants to comply with the cash deposit requirement of the law. (Findings of Fact XII and XIII, Record 67) (No error has been assigned to these Findings.) The law deprives these appellants of the right to continue their chosen occupation.

A law producing such a result can be constitutionally justified only if it bears a rational relation to a constitutionally permissible objective. Presumably, the objective of regulation of the contracting industry is to protect the public from incompetent, fraudulent, or unlawful actions by members of that industry. Does the bond-cash deposit requirement of the Washington law bear a reasonable relation to that objective?

a. No Protection from Incompetency.

The Washington Contractors' Registration Law affords no protection from incompetency. Contractors will be reg-

istered alike so long as they post the cash deposit without regard to their level of skill or past experience. The registration is automatic and no licensing board or any other body with discretionary power considers the qualifications of a contractor to perform his work. If a five year old child sends in his cash deposit, the Director of Licenses will issue his certificate.

b. No Protection from Fraud.

Does the law protect the public from dishonesty? It will be noted that no examination is made into a contractor's moral fitness or prior reputation. Presumably, a convicted bunco artist serving time in the penitentiary would be registered as a contractor if he sent in his $2,000.00 deposit. Nor is the bond or cash deposit conditioned to protect against dishonesty or fraudulent activity. The deposit is required principally as advance security for *honest business debts.* This feature of the Washington Contractors' Law distinguishes it from legislation in other states requiring bonds in certain industries. Such bonds are normally conditioned to indemnify against fraud, dishonest or illegal acts.

If the bond required by the Washington Law were not conditioned to cover honest business debts, the requirements of the bonding companies would not be so high and more contractors could comply with the law. The principal substantive due process question raised by this appeal is whether a law requiring a person to post a cash deposit of a substantial amount as security for the payment of future honest business obligations is reasonably related to a constitutionally permissible objective. Clearly such a law,

in providing security *only* for honest debts, is not reasonably related to the prevention of fraud.

c. Protection from Possible Future Insolvency?

The only conceivable objective of the cash deposit requirement of the Washington law is protection from contractors who subsequently become insolvent. Is this a constitutionally permissible objective? To what extent may a statute aimed at this objective impair the freedom of occupation of the individuals being regulated? Does a $2,000.00 bond or deposit afford any real protection in the event of insolvency? Is the ability to secure a $2,000.00 bond or pay a $2,000.00 cash exaction reasonably related to probability of subsequent insolvency? Is the possibility of future insolvency any greater in the contracting industry than in other industries? Are there no limits to the legislative power in this area? What if the deposit required were $10,000.00 or $100,000.00? May all businesses be legislatively required to put up security for their debts in advance of incurring them? Doesn't this type of legislation proceed from a presumption of dishonesty or insolvency basically at odds with our usual presumption of innocence?

Appellants strongly question whether legislative protection from the *mere possibility* of *future* business insolvency is a constitutionally permissible objective. But even if it were, certainly any minimal protection afforded by a statute so oriented must be balanced against the impairment of personal rights caused by the statute and must be judged in the light of other less drastic legislative alternatives. *Dean Milk Co. v. City of Madison*, 340 U. S. 349 (1951).

Is it necessary to legislate many honest, small contractors out of business in order to solve the problems of the contracting industry? The legislature could undoubtedly solve the problems of juvenile delinquency by incarcerating all children between the ages of five and twenty—appellants suspect, however, that this Court would find such a solution constitutionally objectionable.

2. The Law is Invidiously Discriminatory.

The cash exaction aspect of the law becomes more onerous when it is considered that the amount of the exaction bears no relation to the size of the individual's business. A $2,000.00 bond or deposit is meaningless for a contractor building multi-story office buildings. The same deposit is unnecessarily large for a contractor doing small home remodeling jobs.

The typical "small contractor" (like appellants) is an individual who works by himself and has no employees. He works on one job at a time—usually home remodeling. He will work in several fields of specialization, as required to do a complete job. He is thus a "general contractor" as defined by this law. But his contracts will usually range from $100.00 to $1,000.00 in amount.

Several aspects of the law as written combine to work a denial of equal protection: 1) Because the conditions of the bond are so broad and its size unrelated to the applicant's business, the typical small contractor cannot purchase the bond. 2) Because the law omits a statute of limitations, a cash deposit will be held for six years after the contractor quits business.

The combination of these circumstances is such that the law merely requires the large contractor, with a bonding capacity, to pay a $10.00 or $15.00 premium for the $2,000.00 bond. In stark contrast, however, the law requires the small contractor without a bonding capacity to pay a $2,000.00 cash exaction which is not refundable within a foreseeable period of time. The statute arbitrarily discriminates against the smaller contractor.

Although the law has no significant impact on the large contractor, it directly forces many small contractors out of business. It greatly reduces the opportunities for a self-employed person to enter this industry. It tends to halt the development and growth of the industry and to confine the industry to large established contractors, such as the members of the Intervenor associations.

3. The Law in Denying Access to State Courts is Repugnant to the Due Process Clause.

A Washington contractor who continues to do business without posting his cash deposit or otherwise registering is barred from suing in the state courts to collect the money he has earned. (RCW 18.27.080).

Although some states have enforced such a provision in license laws, *Fraenkel v. Bank of American Nat. Trust & Savings Ass'n.*, 40 Cal.2d 845, 256 P.2d 569 (1953), *Alexander v. Neal*, 364 Mich. 485, 110 N.W.2d 797 (1961), no case has been found sustaining such an extreme penalty in a registration law.

There is a difference. Under a license law a state agency exercises discretion in granting or denying a license and

an opportunity is afforded for judicial review. Under a registration law there is neither discretion nor review. The denial of registration follows automatically from failure to post a bond or cash deposit. The function of a license law is to screen an applicant's qualifications. The function of a registration law is primarily informational—the governmental activity is ministerial rather than discretionary.

To deprive a person of his right to enforce his claim for work he has done merely because he has failed to comply with a ministerial requirement is a denial of procedural due process. Not only is the penalty disproportionately severe, but the applicant is deprived of his right to sue without ever having had an opportunity to have the denial of his registration administratively or judicially reviewed, as would be the case under a license law.

A contractor who cannot afford to withdraw $2,000.00 from his working capital for a period of more than six years, automatically loses his right to enforce claims for work he has done; if a private bonding company determines that it does not wish to sell him a bond. There are no legislative standards to control the bonding company in exercising its "discretion" and there is no judicial review from its decision.

Therefore, even if the legislative requirement of a $2,000.00 bond or cash deposit were otherwise valid, it becomes invalid when coupled with the extreme penalty of forfeiture of the right to enforce claims for work done.

Appellants are immediately affected by this penalty provision. They cannot comply with the law, (Record 67). The law therefore forces them to choose between going out of

business or operating in violation of the law and risking criminal prosecution as well as loss of their right to sue to recover for work done. To avoid this dilemma, this action was commenced for declaratory and injunctive relief a few days before the law was to become effective (Record 2). Both the Washington Supreme Court and the United States Supreme Court have frequently held under similar circumstances that the parties had standing to secure a judicial determination of the issues.

Acme Finance v. Huse, 192 Wash. 96, 73 P.2d 341 (1937).

Pierce v. Society of Sisters, 268 U.S. 510 (1925).
Toomer v. Witsell, 334 U.S. 385 (1948).
Hynes v. Grimes Packing Co., 337 U.S. 86 (1949).

4. The Questions Are of National Significance.

These questions are substantial and of national significance at this time.

In 1963 when Washington enacted its law, only Arizona had a comparable bond requirement for contractors. Ariz. Rev. Stats. Sec. 32.1101. Since this action was commenced, Idaho, California and New Mexico have enacted contractor bond requirements similar to the Washington law. Idaho Code Sec. 54-2612; Cal. Bus. & Prof. Code, Sec. 7071.9; New Mex. Stat. 67-16. A trial court in Boise held the Idaho statute unconstitutional on June 10, 1966.

Martin v. Hatcher, Ada County, Idaho Civil Case No. 36787.

Occupational regulation through bonding is emerging as a popular form of legislative buck-passing. It is easy for a

legislature to pass to a bonding company the task of determining who should be permitted to engage in business and to prescribe impossibly high alternatives to a bond.

No standards are prescribed to guide the bonding companies' determination. The bonding company is a private organization entitled to decide for itself what risks it will underwrite. There is no judicial review from a denial of a bond application, yet a denial by one company will usually preclude consideration by another.

No contention is made here that a legislature is powerless to require bonds in certain industries. Appellants do assert, however, that there are limitations. A legislature may not require *any kind of a bond* in *all* industries..

Some judicial guidelines are needed. May the right to engage in *all* businesses be conditioned on posting a bond? May the legislature require *all* businessmen to post security in advance for their future honest business obligations? Considering the breadth of this bond and the nature of the contracting industry, the Washington Contractors' Registration Act is an extreme example of the deprivation of freedom of occupation through business regulation. A refusal to consider the questions raised by this appeal would be tantamont to a conclusion that there are no constitutional limitations on the power of the legislature to impose bond or cash deposit requirements on all businesses.

CONCLUSION

Plenary review of the issues involved in this appeal is respectfully urged. The questions raised relating to legislative limitations on freedom of occupation are of national significance. Many hundreds of small contractors, including appellants, look to the Court, in deciding this appeal, to preserve their right to continue to work as self-employed contractors.

If the Court should conclude that appeal is not the proper route for seeking review, the Court is respectfully urged to grant certiorari.

Respectfully submitted,

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APPENDIX A

CHAPTER 77, WASHINGTON LAWS OF 1963
RCW 18.27 REGISTRATION OF CONTRACTORS

Section 1. (RCW 18.27.010) A "contractor" as used in this act is any person, firm or corporation who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof including the erection of scaffolding or other structures or works in connection therewith; or, who, to do similar work upon his own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided herein. A "general contractor" is a contractor whose business operations require the use of more than two unrelated building trades or crafts whose work the contractor shall superintend or do in whole or in part. The terms "general contractor" and "builder" are synonymous. A "specialty contractor" is a contractor whose operations as such do not fall within the foregoing definition of "general contractor".

Section 2. (RCW 18.27.020) It shall be unlawful for any person to submit any bid or do any work as a contractor until such person shall have been issued a certificate of registration by the state department of licenses. A partnership or joint venture shall be deemed registered if any one of the general partners or venturers whose name appears in the name under which the partnership or venture does

business shall be registered. A violation of this section shall be a misdemeanor.

Section 3. (RCW 18.27.030) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director of licenses and which shall include the following information pertaining to the applicant.

(1) Employer social security number.

(2) Industrial insurance number.

(3) Employment security department number.

(4) State excise tax registration number.

(5) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.

(6) The name and address of each partner if the applicant be a firm or partnership, or the name and address of the owner if the applicant be an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant be a corporation. The information contained in such application shall be a matter of public record and open to public inspection.

Section 4. (RCW 18.27.040) Each applicant shall, at the time of applying for a certificate of registration, file with the director of licenses a surety bond running to the State of Washington if a general contractor, in the sum of two thousand dollars; if a specialty contractor, in the sum of one thousand dollars, conditioned that the applicant will

pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of negligent or improper work or breach of contract in the conduct of the contracting business. Any person having a claim against the contractor for any of the items referred to in this section may bring suit upon such bond in the superior court of the county in which the work is done or of any county in which jurisdiction of the contractor may be had. A copy of the complaint shall be served by registered or certified mail upon the director of licenses at the time suit is started and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service shall constitute service on the surety and the director shall transmit the complaint or a copy thereof to the surety within forty-eight hours after it shall have been received. The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond, but in case claims pending at any one time exceed the amount of the bond, claims shall be satisfied from the bond in the following order:

(1) Labor, including employee benefits;

(2) Taxes and contributions due the state of Washington;

(3) Material and equipment;

(4) Claims for breach of contract.

In the event that any final judgment shall impair the liability of the surety upon the bond so furnished that there shall not be in effect a bond undertaking in the full amount prescribed in this section, the director shall suspend the registration of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims shall have been furnished.

In lieu of the surety bond required by this section the contractor may file with the director a cash deposit or other negotiable security acceptable to the director.

In the event of a judgment being entered against such deposit, the director of licenses shall upon receipt of a certified copy of a final judgment, pay from the amount of the deposit said judgment.

Section 5. (RCW 18.27.050) At the time of registration the applicant shall furnish to the director satisfactory evidence that the applicant has procured and has in effect public liability and property damage insurance covering the applicant's contracting operations in the sum of not less than twenty thousand dollars for injury or damage to property and fifty thousand dollars for injury or damage including death to any one person and one hundred thousand dollars for injury or damage including death to more than one person.

In the event that such insurance shall cease to be effective the registration of the contractor shall be suspended until such insurance shall be reinstated.

Section 6. (RCW 18.27.060) A certificate of registration shall be valid for one year and shall be renewed by the same procedure as for an original registration on or before August first of each year. The director shall issue to the applicant a certificate of registration upon compliance with the registration of this act.

Section 7. (RCW 18.27.070) The applicant shall pay to the director of licenses a registration or renewal fee of; if a general contractor, thirty-five dollars; if a specialty contractor, twenty dollars.

Section 8 (RCW 18.27.080) No person engaged in the business or acting in the capacity of a contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract for which registration is required under this act without alleging and proving that he was a duly registered contractor at the time he contracted for the performance of such work or entered into such contract.

Section 9 (RCW 18.27.090). This act shall not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the public service commission in construction, maintenance or development work incidental to their own business;

(4) Any construction, repair or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale or installation of any finished products, materials or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) Any construction, alteration, improvement or repair of personal property;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than one hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply

in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than one hundred dollars for the purpose of evasion of this act or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he is a contractor, or that he is qualified to engage in the business of contractor;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor;

(12) Any person working on his own property, whether occupied by him or not, and any person working on his residence, whether owned by him or not;

(13) Owners of commercial properties who use their own employees to do maintenance, repair and alteration work in or upon their own properties;

(14) A licensed architect or civil or professional engineer acting solely in his professional capacity, an electri-

cian licensed under the laws of the state of Washington, or a plumber licensed under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the licensee is operating within the scope of his license;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his sole compensation or as an employee with wages as his sole compensation.

(16) Contractors on highway projects who have been pre-qualified as required by chapter 13 of the Laws of 1961, RCW 47.28.070, with the Highway Department to perform highway construction, reconstruction or maintenance work. (As amended)

Section 10. (RCW 18.27.100) Except as provided in section 2 for partnerships and joint ventures, no person who has registered under one name as provided in this act shall engage in the business, or act in the capacity of a contractor under any other name unless such name also is registered hereunder. All advertising and all contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor which show a contractor's name or address shall show the contractor's name or address as registered hereunder. No contractor shall advertise that he is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this act. All individual contractors and all partners, associates,

agents, salesmen, solicitors, officers and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contactor or activities related thereto.

Section 11. (RCW 18.27.900) If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Section 12. This act shall take effect August 1, 1963.